

AMENDED IN ASSEMBLY AUGUST 8, 2008

AMENDED IN ASSEMBLY JULY 3, 2008

AMENDED IN ASSEMBLY JUNE 16, 2008

AMENDED IN SENATE MAY 7, 2008

AMENDED IN SENATE APRIL 7, 2008

SENATE BILL

No. 1441

Introduced by Senator Ridley-Thomas

February 21, 2008

An act to amend Sections 1695.1, 1695.5, 1695.6, 1697, 1698, 2361, 2365, 2366, 2367, 2369, 2663, 2665, 2666, 2770.1, 2770.8, 2770.11, 2770.12, 3501, 3534.1, 3534.3, 3534.4, ~~and 3534.9~~ 3534.9, *and 4371* of, and to add Article 3.6 (commencing with Section 315) to Chapter 4 of Division 1 of, the Business and Professions Code, relating to health care.

LEGISLATIVE COUNSEL'S DIGEST

SB 1441, as amended, Ridley-Thomas. Healing arts practitioners: substance abuse.

Existing law requires various healing arts licensing boards, including the Dental Board of California, the Board of Registered Nursing, the Physical Therapy Board of California, the Physician Assistant Committee, ~~and the Osteopathic Medical Board of California, and the California State Board of Pharmacy~~ to establish and administer diversion *or recovery* programs or diversion evaluation committees for the rehabilitation of healing arts practitioners whose competency is impaired due to the abuse of drugs or alcohol, and gives the diversion evaluation committees certain duties related to termination of a ~~license~~

licensee from the diversion program and reporting termination, designing treatment programs, denying participation in the program, reviewing activities and performance of contractors, determining completion of the program, and purging and destroying records, as specified. Existing law requires the California State Board of Pharmacy to contract with one or more qualified contractors to administer the pharmacists recovery program and requires the board to review the pharmacists recovery program on a quarterly basis, as specified.

This bill would establish in the Department of Consumer Affairs the Substance Abuse Coordination Committee, which would be comprised of the executive officers of the department's healing arts licensing boards, as specified, *and a designee of the State Department of Alcohol Drug Programs*. The bill would require the committee to formulate, no later than January 1, 2010, uniform and specific standards in specified areas that each healing arts board would be required to use in dealing with substance-abusing licensees. The bill would specify that the program managers of the diversion programs for the Dental Board of California, the Board of Registered Nursing, the Physical Therapy Board of California, the Physician Assistant Committee, and the Osteopathic Medical Board of California, as designated by the executive officers of those entities, are responsible for certain duties previously assigned to the diversion evaluation committees under those programs, including, as specified, duties related to termination of a licensee from the diversion program and reporting termination, designing treatment programs, denying participation in the program, reviewing activities and performance of contractors, determining completion of the program, and purging and destroying records. The bill would also provide that diversion evaluation committees created by any of the specified boards or committees operate in an advisory role to the program manager of the diversion program, and would require those diversion evaluation committees to make certain recommendations to the program managers. *The bill would require the executive officer of the California State Board of Pharmacy to designate a program manager of the pharmacists recovery program, and would require the program manager to review the pharmacists recovery program quarterly and to work with the contractors, as specified.*

The bill would specify that the diversion program responsibilities imposed on licensing boards under these provisions shall be considered current operating expenses of those boards.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature hereby finds and declares all of
2 the following:

3 (a) Substance abuse is an increasing problem in the health care
4 professions, where the impairment of a health care practitioner for
5 even one moment can mean irreparable harm to a patient.

6 (b) Several health care licensing boards have “diversion
7 programs” designed to identify substance-abusing licensees, direct
8 them to treatment and monitoring, and return them to practice in
9 a manner that will not endanger the public health and safety.

10 (c) Substance abuse monitoring programs, particularly for health
11 care professionals, must operate with the highest level of integrity
12 and consistency. Patient protection is paramount.

13 (d) The diversion program of the Medical Board of California,
14 created in 1981, has been subject to five external performance
15 audits in its 27-year history and has failed all five audits, which
16 uniformly concluded that the program has inadequately monitored
17 substance-abusing physicians and has failed to promptly terminate
18 from the program, and appropriately refer for discipline, physicians
19 who do not comply with the terms and conditions of the program,
20 thus placing patients at risk of harm.

21 (e) The medical board’s diversion program has failed to protect
22 patients from substance-abusing physicians, and the medical board
23 has properly decided to cease administering the program effective
24 June 30, 2008.

25 (f) The administration of diversion programs created at other
26 health care boards has been contracted to a series of private
27 vendors, and none of those vendors has ever been subject to a
28 performance audit, such that it is not possible to determine whether
29 those programs are effective in monitoring substance-abusing
30 licensees and assisting them to recover from their addiction in the
31 long term.

32 (g) Various health care licensing boards have inconsistent or
33 nonexistent standards that guide the way they deal with
34 substance-abusing licensees.

1 (h) Patients would be better protected from substance-abusing
2 licensees if their regulatory boards agreed to and enforced
3 consistent and uniform standards and best practices in dealing with
4 substance-abusing licensees.

5 SEC. 2. It is the intent of the Legislature that:

6 (a) Pursuant to Section 156.1 of the Business and Professions
7 Code and Section 8546.7 of the Government Code, that the
8 Department of Consumer Affairs conduct a thorough audit of the
9 effectiveness, efficiency, and overall performance of the vendor
10 chosen by the department to manage diversion programs for
11 substance-abusing licensees of health care licensing boards created
12 in the Business and Professions Code, and make recommendations
13 regarding the continuation of the programs and any changes or
14 reforms required to ensure that individuals participating in the
15 programs are appropriately monitored, and the public is protected
16 from health care practitioners who are impaired due to alcohol or
17 drug abuse or mental or physical illness.

18 (b) The audit shall identify, by type of board licensee, the
19 percentage of self-referred participants, board-referred participants,
20 and board-ordered participants. The audit shall describe in detail
21 the diversion services provided by the vendor, including all aspects
22 of bodily fluids testing, including, but not limited to, frequency of
23 testing, randomicity, method of notice to participants, number of
24 hours between the provision of notice and the test, standards for
25 specimen collectors, procedures used by specimen collectors, such
26 as whether the collection process is observed by the collector,
27 location of testing, and average timeframe from the date of the test
28 to the date the result of the test becomes available; group meeting
29 attendance requirements, including, but not limited to, required
30 qualifications for group meeting facilitators, frequency of required
31 meeting attendance, and methods of documenting and reporting
32 attendance or nonattendance by program participants; standards
33 used in determining whether inpatient or outpatient treatment is
34 necessary; and, if applicable, worksite monitoring requirements
35 and standards. The audit shall review the timeliness of diversion
36 services provided by the vendor; the thoroughness of
37 documentation of treatment, aftercare, and monitoring services
38 received by participants; and the thoroughness of documentation
39 of the effectiveness of the treatment and aftercare services received
40 by participants. In determining the effectiveness and efficiency of

1 the vendor, the audit shall evaluate the vendor's approval process
2 for providers or contractors that provide diversion services,
3 including specimen collectors, group meeting facilitators, and
4 worksite monitors; the vendor's disapproval of providers or
5 contractors that fail to provide effective or timely diversion
6 services; and the vendor's promptness in notifying the boards when
7 a participant fails to comply with the terms of his or her diversion
8 contract or the rules of the board's program. The audit shall also
9 recommend whether the vendor should be more closely monitored
10 by the department, including whether the vendor should provide
11 the department with periodic reports demonstrating the timeliness
12 and thoroughness of documentation of noncompliance with
13 diversion program contracts and regarding its approval and
14 disapproval of providers and contractors that provide diversion
15 services.

16 (c) The vendor and its staff shall cooperate with the department
17 and shall provide data, information, and case files as requested by
18 the department to perform all of his or her duties. The provision
19 of confidential data, information, and case files from health
20 care-related boards and the vendor to the department shall not
21 constitute a waiver of any exemption from disclosure or discovery
22 or of any confidentiality protection or privilege otherwise provided
23 by law that is applicable to the data, information, or case files. It
24 is the Legislature's intent that the audit be completed by June 30,
25 2010, and on subsequent years thereafter as determined by the
26 department.

27 SEC. 3. Article 3.6 (commencing with Section 315) is added
28 to Chapter 4 of Division 1 of the Business and Professions Code,
29 to read:

30
31 Article 3.6. Uniform Standards Regarding Substance-Abusing
32 Healing Arts Licensees
33

34 315. (a) For the purpose of determining uniform standards
35 that will be used by healing arts boards in dealing with
36 substance-abusing licensees, there is established in the Department
37 of Consumer Affairs the Substance Abuse Coordination
38 Committee. The committee shall be comprised of the executive
39 officers of the department's healing arts boards established pursuant
40 to Division 2 (commencing with Section 500), the State Board of

1 Chiropractic Examiners, ~~and~~ the Osteopathic Medical Board of
2 California, *and a designee of the State Department of Alcohol and*
3 *Drug Programs*. The Director of Consumer Affairs shall chair the
4 committee *and may invite individuals or stakeholders who have*
5 *particular expertise in the area of substance abuse to advise the*
6 *committee*.

7 (b) The committee shall be subject to the Bagley-Keene Open
8 Meeting Act (Article 9 (commencing with Section 11120) of
9 Division 3 of Title 2 of the Government Code).

10 (c) By January 1, 2010, the committee shall formulate uniform
11 and specific standards in each of the following areas that each
12 healing arts board shall use in dealing with substance-abusing
13 licensees, whether or not a board chooses to have a formal
14 diversion program:

15 (1) Specific requirements for a clinical diagnostic evaluation of
16 the licensee, including, but not limited to, required qualifications
17 for the providers evaluating the licensee.

18 (2) Specific requirements for the temporary removal of the
19 licensee from practice, in order to enable the licensee to undergo
20 the clinical diagnostic evaluation described in subdivision (a) and
21 any treatment recommended by the evaluator described in
22 subdivision (a) and approved by the board, and specific criteria
23 that the licensee must meet before being permitted to return to
24 practice on a full-time or part-time basis.

25 (3) Specific requirements that govern the ability of the licensing
26 board to communicate with the licensee's employer about the
27 licensee's status and condition.

28 (4) Standards governing all aspects of required testing, including,
29 but not limited to, frequency of testing, randomicity, method of
30 notice to the licensee, number of hours between the provision of
31 notice and the test, standards for specimen collectors, procedures
32 used by specimen collectors, the permissible locations of testing,
33 whether the collection process must be observed by the collector,
34 backup testing requirements when the licensee is on vacation or
35 otherwise unavailable for local testing, requirements for the
36 laboratory that analyzes the specimens, and the required maximum
37 timeframe from the test to the receipt of the result of the test.

38 (5) Standards governing all aspects of group meeting attendance
39 requirements, including, but not limited to, required qualifications
40 for group meeting facilitators, frequency of required meeting

1 attendance, and methods of documenting and reporting attendance
2 or nonattendance by licensees.

3 (6) Standards used in determining whether inpatient, outpatient,
4 or other type of treatment is necessary.

5 (7) Worksite monitoring requirements and standards, including,
6 but not limited to, required qualifications of worksite monitors,
7 required methods of monitoring by worksite monitors, and required
8 reporting by worksite monitors.

9 (8) Procedures to be followed when a licensee tests positive for
10 a banned substance.

11 (9) Procedures to be followed when a licensee is confirmed to
12 have ingested a banned substance.

13 (10) Specific consequences for major violations and minor
14 violations. In particular, the committee shall consider the use of a
15 “deferred prosecution” stipulation similar to the stipulation
16 described in Section 1000 of the Penal Code, in which the licensee
17 admits to self-abuse of drugs or alcohol and surrenders his or her
18 license. That agreement is deferred by the agency unless or until
19 the licensee commits a major violation, in which case it is revived
20 and the license is surrendered.

21 (11) Criteria that a licensee must meet in order to petition for
22 return to practice on a full-time basis.

23 (12) Criteria that a licensee must meet in order to petition for
24 reinstatement of a full and unrestricted license.

25 (13) If a board uses a private-sector vendor that provides
26 diversion services, standards for immediate reporting by the vendor
27 to the board of any and all noncompliance with any term of the
28 diversion contract or probation; standards for the vendor’s approval
29 process for providers or contractors that provide diversion services,
30 including, but not limited to, specimen collectors, group meeting
31 facilitators, and worksite monitors; standards requiring the vendor
32 to disapprove and discontinue the use of providers or contractors
33 that fail to provide effective or timely diversion services; and
34 standards for a licensee’s termination from the program and referral
35 to enforcement.

36 (14) If a board uses a private-sector vendor that provides
37 diversion services, the extent to which licensee participation in
38 that program shall be kept confidential from the public.

39 (15) If a board uses a private-sector vendor that provides
40 diversion services, a schedule for external independent audits of

1 the vendor's performance in adhering to the standards adopted by
2 the committee.

3 (16) Measurable criteria and standards to determine whether
4 each board's method of dealing with substance-abusing licensees
5 protects patients from harm and is effective in assisting its licensees
6 in recovering from substance abuse in the long term.

7 SEC. 4. Section 1695.1 of the Business and Professions Code
8 is amended to read:

9 1695.1. As used in this article:

10 (a) "Board" means the Board of Dental Examiners of California.

11 (b) "Committee" means a diversion evaluation committee
12 created by this article.

13 (c) "Program manager" means the staff manager of the diversion
14 program, as designated by the executive officer of the board. The
15 program manager shall have background experience in dealing
16 with substance abuse issues.

17 SEC. 5. Section 1695.5 of the Business and Professions Code
18 is amended to read:

19 1695.5. (a) The board shall establish criteria for the acceptance,
20 denial, or termination of licentiates in a diversion program. Unless
21 ordered by the board as a condition of licentiate disciplinary
22 probation, only those licentiates who have voluntarily requested
23 diversion treatment and supervision by a committee shall
24 participate in a diversion program.

25 (b) A licentiate who is not the subject of a current investigation
26 may self-refer to the diversion program on a confidential basis,
27 except as provided in subdivision (f).

28 (c) A licentiate under current investigation by the board may
29 also request entry into the diversion program by contacting the
30 board's Diversion Program Manager. The Diversion Program
31 Manager may refer the licentiate requesting participation in the
32 program to a diversion evaluation committee for evaluation of
33 eligibility. Prior to authorizing a licentiate to enter into the
34 diversion program, the Diversion Program Manager may require
35 the licentiate, while under current investigation for any violations
36 of the Dental Practice Act or other violations, to execute a
37 statement of understanding that states that the licentiate understands
38 that his or her violations of the Dental Practice Act or other statutes
39 that would otherwise be the basis for discipline, may still be
40 investigated and the subject of disciplinary action.

1 (d) If the reasons for a current investigation of a licentiate are
2 based primarily on the self-administration of any controlled
3 substance or dangerous drugs or alcohol under Section 1681 of
4 the Business and Professions Code, or the illegal possession,
5 prescription, or nonviolent procurement of any controlled substance
6 or dangerous drugs for self-administration that does not involve
7 actual, direct harm to the public, the board shall close the
8 investigation without further action if the licentiate is accepted
9 into the board's diversion program and successfully completes the
10 requirements of the program. If the licentiate withdraws or is
11 terminated from the program by the program manager, the
12 investigation shall be reopened and disciplinary action imposed,
13 if warranted, as determined by the board.

14 (e) Neither acceptance nor participation in the diversion program
15 shall preclude the board from investigating or continuing to
16 investigate, or taking disciplinary action or continuing to take
17 disciplinary action against, any licentiate for any unprofessional
18 conduct committed before, during, or after participation in the
19 diversion program.

20 (f) All licentiates shall sign an agreement of understanding that
21 the withdrawal or termination from the diversion program at a time
22 when the program manager determines the licentiate presents a
23 threat to the public's health and safety shall result in the utilization
24 by the board of diversion treatment records in disciplinary or
25 criminal proceedings.

26 (g) Any licentiate terminated from the diversion program for
27 failure to comply with program requirements is subject to
28 disciplinary action by the board for acts committed before, during,
29 and after participation in the diversion program. A licentiate who
30 has been under investigation by the board and has been terminated
31 from the diversion program by the program manager shall be
32 reported by the program manager to the board.

33 SEC. 6. Section 1695.6 of the Business and Professions Code
34 is amended to read:

35 1695.6. A committee created under this article operates in an
36 advisory role to the diversion program manager. Each committee
37 shall have the following duties and responsibilities:

38 (a) To evaluate those licentiates who request to participate in
39 the diversion program according to the guidelines prescribed by
40 the board and to make recommendations to the program manager.

1 In making the recommendations, a committee shall consider the
2 recommendations of any licentiates designated by the board to
3 serve as consultants on the admission of the licentiate to the
4 diversion program.

5 (b) To review and designate those treatment facilities to which
6 licentiates in a diversion program may be referred, and make
7 recommendations to the program manager.

8 (c) To receive and review information concerning a licentiate
9 participating in the program.

10 (d) To consider in the case of each licentiate participating in a
11 program whether he or she may with safety continue or resume
12 the practice of dentistry, and make recommendations to the
13 program manager.

14 (e) To perform such other related duties, in an advisory capacity,
15 as the board may by regulation require.

16 SEC. 7. Section 1697 of the Business and Professions Code is
17 amended to read:

18 1697. Each licentiate who requests participation in a diversion
19 program shall agree to cooperate with the treatment program
20 designed by the program manager and to bear all costs related to
21 the program, unless the cost is waived by the board. Any failure
22 to comply with the provisions of a treatment program may result
23 in termination of the licentiate's participation in a program.

24 SEC. 8. Section 1698 of the Business and Professions Code is
25 amended to read:

26 1698. (a) After the program manager in his or her discretion
27 has determined that a licentiate has been rehabilitated and the
28 diversion program is completed, the program manager shall purge
29 and destroy all records pertaining to the licentiate's participation
30 in a diversion program.

31 (b) Except as authorized by subdivision (f) of Section 1695.5,
32 all board and committee records and records of proceedings
33 pertaining to the treatment of a licentiate in a program shall be
34 kept confidential and are not subject to discovery or subpoena.

35 SEC. 9. Section 2361 of the Business and Professions Code is
36 amended to read:

37 2361. As used in this article:

38 (a) "Board" means the Osteopathic Medical Board of California.

39 (b) "Diversion program" means a treatment program created
40 by this article for osteopathic physicians and surgeons whose

1 competency may be threatened or diminished due to abuse of drugs
2 or alcohol.

3 (c) “Committee” means a diversion evaluation committee
4 created by this article.

5 (d) “Participant” means a California licensed osteopathic
6 physician and surgeon.

7 (e) “Program manager” means the staff manager of the diversion
8 program, as designated by the executive officer of the board. The
9 program manager shall have background experience in dealing
10 with substance abuse issues.

11 SEC. 10. Section 2365 of the Business and Professions Code
12 is amended to read:

13 2365. (a) The board shall establish criteria for the acceptance,
14 denial, or termination of participants in the diversion program.
15 Unless ordered by the board as a condition of disciplinary
16 probation, only those participants who have voluntarily requested
17 diversion treatment and supervision by a committee shall
18 participate in the diversion program.

19 (b) A participant who is not the subject of a current investigation
20 may self-refer to the diversion program on a confidential basis,
21 except as provided in subdivision (f).

22 (c) A participant under current investigation by the board may
23 also request entry into the diversion program by contacting the
24 board’s Diversion Program Manager. The Diversion Program
25 Manager may refer the participant requesting participation in the
26 program to a diversion evaluation committee for evaluation of
27 eligibility. Prior to authorizing a licentiate to enter into the
28 diversion program, the Diversion Program Manager may require
29 the licentiate, while under current investigation for any violations
30 of the Medical Practice Act or other violations, to execute a
31 statement of understanding that states that the licentiate understands
32 that his or her violations of the Medical Practice Act or other
33 statutes that would otherwise be the basis for discipline may still
34 be investigated and the subject of disciplinary action.

35 (d) If the reasons for a current investigation of a participant are
36 based primarily on the self-administration of any controlled
37 substance or dangerous drugs or alcohol under Section 2239, or
38 the illegal possession, prescription, or nonviolent procurement of
39 any controlled substance or dangerous drugs for self-administration
40 that does not involve actual, direct harm to the public, the board

1 may close the investigation without further action if the licentiate
2 is accepted into the board's diversion program and successfully
3 completes the requirements of the program. If the participant
4 withdraws or is terminated from the program by the program
5 manager, the investigation may be reopened and disciplinary action
6 imposed, if warranted, as determined by the board.

7 (e) Neither acceptance nor participation in the diversion program
8 shall preclude the board from investigating or continuing to
9 investigate, or taking disciplinary action or continuing to take
10 disciplinary action against, any participant for any unprofessional
11 conduct committed before, during, or after participation in the
12 diversion program.

13 (f) All participants shall sign an agreement of understanding
14 that the withdrawal or termination from the diversion program at
15 a time when the program manager determines the licentiate presents
16 a threat to the public's health and safety shall result in the
17 utilization by the board of diversion treatment records in
18 disciplinary or criminal proceedings.

19 (g) Any participant terminated from the diversion program for
20 failure to comply with program requirements is subject to
21 disciplinary action by the board for acts committed before, during,
22 and after participation in the diversion program. A participant who
23 has been under investigation by the board and has been terminated
24 from the diversion program by the program manager shall be
25 reported by the program manager to the board.

26 SEC. 11. Section 2366 of the Business and Professions Code
27 is amended to read:

28 2366. A committee created under this article operates in an
29 advisory role to the diversion program manager. Each committee
30 shall have the following duties and responsibilities:

31 (a) To evaluate those licensees who request participation in the
32 program according to the guidelines prescribed by the board, and
33 to make recommendations to the program manager.

34 (b) To review and designate those treatment facilities and
35 services to which a participant in the program may be referred,
36 and to make recommendations to the program manager.

37 (c) To receive and review information concerning participants
38 in the program.

1 (d) To consider whether each participant in the treatment
2 program may safely continue or resume the practice of medicine,
3 and to make recommendations to the program manager.

4 (e) To prepare quarterly reports to be submitted to the board,
5 which include, but are not limited to, information concerning the
6 number of cases accepted, denied, or terminated with compliance
7 or noncompliance and a cost analysis of the program.

8 (f) To promote the program to the public and within the
9 profession, including providing all current licentiates with written
10 information concerning the program.

11 (g) To perform such other related duties as the board may by
12 regulation require.

13 SEC. 12. Section 2367 of the Business and Professions Code
14 is amended to read:

15 2367. (a) Each licensee who requests participation in a
16 treatment program shall agree to cooperate with the treatment
17 program designed by the program manager. The committee shall
18 inform each participant in the program of the procedures followed,
19 the rights and responsibilities of the participant, and the possible
20 results of noncompliance with the program. Any failure to comply
21 with the treatment program may result in termination of
22 participation.

23 (b) Participation in a program under this article shall not be a
24 defense to any disciplinary action which may be taken by the board.
25 Further, no provision of this article shall preclude the board from
26 commencing disciplinary action against a licensee who is
27 terminated from a program established pursuant to this article.

28 SEC. 13. Section 2369 of the Business and Professions Code
29 is amended to read:

30 2369. (a) After the program manager, in his or her discretion,
31 has determined that a participant has been rehabilitated and the
32 program is completed, the program manager shall purge and
33 destroy all records pertaining to the participation in a treatment
34 program.

35 (b) Except as authorized by subdivision (f) of Section 2365, all
36 board and committee records and records of proceedings pertaining
37 to the treatment of a participant in a program shall be confidential
38 and are not subject to discovery or subpoena except in the case of
39 discovery or subpoena in any criminal proceeding.

1 SEC. 14. Section 2663 of the Business and Professions Code
2 is amended to read:

3 2663. The board shall establish and administer a diversion
4 program for the rehabilitation of physical therapists and physical
5 therapist assistants whose competency is impaired due to the abuse
6 of drugs or alcohol. The board may contract with any other state
7 agency or a private organization to perform its duties under this
8 article. The board may establish one or more diversion evaluation
9 committees to assist it in carrying out its duties under this article.
10 Any diversion evaluation committee established by the board shall
11 operate in an advisory role to the diversion program manager, as
12 designated by the executive officer of the board.

13 SEC. 15. Section 2665 of the Business and Professions Code
14 is amended to read:

15 2665. Each diversion evaluation committee has the following
16 duties and responsibilities:

17 (a) To evaluate physical therapists and physical therapist
18 assistants who request participation in the program and to make
19 recommendations to the program manager. In making
20 recommendations, the committee shall consider any
21 recommendations from professional consultants on the admission
22 of applicants to the diversion program.

23 (b) To review and designation of treatment facilities to which
24 physical therapists and physical therapist assistants in the diversion
25 program may be referred, and to make recommendations to the
26 program manager.

27 (c) The receipt and review of information concerning physical
28 therapists and physical therapist assistants participating in the
29 program.

30 (d) Calling meetings as necessary to consider the requests of
31 physical therapists and physical therapist assistants to participate
32 in the diversion program, to consider reports regarding participants
33 in the program, and to consider any other matters referred to it by
34 the board.

35 (e) To consider whether each participant in the diversion
36 program may with safety continue or resume the practice of
37 physical therapy, and to make recommendations to the program
38 manager.

39 (f) To make recommendations to the program manager regarding
40 the terms and conditions of the diversion agreement for each

1 physical therapist and physical therapist assistant participating in
2 the program, including treatment, supervision, and monitoring
3 requirements.

4 (g) Holding a general meeting at least twice a year, which shall
5 be open and public, to evaluate the diversion program's progress,
6 to prepare reports to be submitted to the board, and to suggest
7 proposals for changes in the diversion program.

8 (h) For the purposes of Division 3.6 (commencing with Section
9 810) of Title 1 of the Government Code, any member of a diversion
10 evaluation committee shall be considered a public employee. No
11 board or diversion evaluation committee member, contractor, or
12 agent thereof, shall be liable for any civil damage because of acts
13 or omissions which may occur while acting in good faith in a
14 program established pursuant to this article.

15 SEC. 16. Section 2666 of the Business and Professions Code
16 is amended to read:

17 2666. (a) Criteria for acceptance into the diversion program
18 shall include all of the following:

19 (1) The applicant shall be licensed as a physical therapist or
20 approved as a physical therapist assistant by the board and shall
21 be a resident of California.

22 (2) The applicant shall be found to abuse dangerous drugs or
23 alcoholic beverages in a manner which may affect his or her ability
24 to practice physical therapy safely or competently.

25 (3) The applicant shall have voluntarily requested admission to
26 the program or shall be accepted into the program in accordance
27 with terms and conditions resulting from a disciplinary action.

28 (4) The applicant shall agree to undertake any medical or
29 psychiatric examination ordered to evaluate the applicant for
30 participation in the program.

31 (5) The applicant shall cooperate with the program by providing
32 medical information, disclosure authorizations, and releases of
33 liability as may be necessary for participation in the program.

34 (6) The applicant shall agree in writing to cooperate with all
35 elements of the treatment program designed for him or her.

36 Any applicant may be denied participation in the program if the
37 board or the program manager determines that the applicant will
38 not substantially benefit from participation in the program or that
39 the applicant's participation in the program creates too great a risk
40 to the public health, safety, or welfare.

(b) A participant may be terminated from the program for any of the following reasons:

(1) The participant has successfully completed the treatment program.

(2) The participant has failed to comply with the treatment program designated for him or her.

(3) The participant fails to meet any of the criteria set forth in subdivision (a) or (c).

(4) It is determined that the participant has not substantially benefited from participation in the program or that his or her continued participation in the program creates too great a risk to the public health, safety, or welfare. Whenever an applicant is denied participation in the program or a participant is terminated from the program for any reason other than the successful completion of the program, and it is determined that the continued practice of physical therapy by that individual creates too great a risk to the public health, safety, and welfare, that fact shall be reported to the executive officer of the board and all documents and information pertaining to and supporting that conclusion shall be provided to the executive officer. The matter may be referred for investigation and disciplinary action by the board. Each physical therapist or physical therapy assistant who requests participation in a diversion program shall agree to cooperate with the recovery program designed for him or her. Any failure to comply with that program may result in termination of participation in the program.

The diversion evaluation committee shall inform each participant in the program of the procedures followed in the program, of the rights and responsibilities of a physical therapist or physical therapist assistant in the program, and the possible results of noncompliance with the program.

(c) In addition to the criteria and causes set forth in subdivision (a), the board may set forth in its regulations additional criteria for admission to the program or causes for termination from the program.

SEC. 17. Section 2770.1 of the Business and Professions Code is amended to read:

2770.1. As used in this article:

(a) “Board” means the Board of Registered Nursing.

(b) “Committee” means a diversion evaluation committee created by this article.

1 (c) “Program manager” means the staff manager of the diversion
2 program, as designated by the executive officer of the board. The
3 program manager shall have background experience in dealing
4 with substance abuse issues.

5 SEC. 18. Section 2770.8 of the Business and Professions Code
6 is amended to read:

7 2770.8. A committee created under this article operates in an
8 advisory role to the diversion program manager. Each committee
9 shall have the following duties and responsibilities:

10 (a) To evaluate those registered nurses who request participation
11 in the program according to the guidelines prescribed by the board,
12 and to make recommendations to the program manager.

13 (b) To review and designate those treatment services to which
14 registered nurses in a diversion program may be referred, and to
15 make recommendations to the program manager.

16 (c) To receive and review information concerning a registered
17 nurse participating in the program.

18 (d) To consider in the case of each registered nurse participating
19 in a program whether he or she may with safety continue or resume
20 the practice of nursing, and to make recommendations to the
21 program manager.

22 (e) To call meetings as necessary to consider the requests of
23 registered nurses to participate in a diversion program, and to
24 consider reports regarding registered nurses participating in a
25 program.

26 (f) To make recommendations to the program manager regarding
27 the terms and conditions of the diversion agreement for each
28 registered nurse participating in the program, including treatment,
29 supervision, and monitoring requirements.

30 SEC. 19. Section 2770.11 of the Business and Professions
31 Code is amended to read:

32 2770.11. (a) Each registered nurse who requests participation
33 in a diversion program shall agree to cooperate with the
34 rehabilitation program designed by the program manager. Any
35 failure to comply with the provisions of a rehabilitation program
36 may result in termination of the registered nurse’s participation in
37 a program. The name and license number of a registered nurse
38 who is terminated for any reason, other than successful completion,
39 shall be reported to the board’s enforcement program.

(b) If the program manager determines that a registered nurse, who is denied admission into the program or terminated from the program, presents a threat to the public or his or her own health and safety, the program manager shall report the name and license number, along with a copy of all diversion records for that registered nurse, to the board's enforcement program. The board may use any of the records it receives under this subdivision in any disciplinary proceeding.

SEC. 20. Section 2770.12 of the Business and Professions Code is amended to read:

2770.12. (a) After the program manager in his or her discretion has determined that a registered nurse has successfully completed the diversion program, all records pertaining to the registered nurse's participation in the diversion program shall be purged.

(b) All board and committee records and records of a proceeding pertaining to the participation of a registered nurse in the diversion program shall be kept confidential and are not subject to discovery or subpoena, except as specified in subdivision (b) of Section 2770.11 and subdivision (c).

(c) A registered nurse shall be deemed to have waived any rights granted by any laws and regulations relating to confidentiality of the diversion program, if he or she does any of the following:

(1) Presents information relating to any aspect of the diversion program during any stage of the disciplinary process subsequent to the filing of an accusation, statement of issues, or petition to compel an examination pursuant to Article 12.5 (commencing with Section 820) of Chapter 1. The waiver shall be limited to information necessary to verify or refute any information disclosed by the registered nurse.

(2) Files a lawsuit against the board relating to any aspect of the diversion program.

(3) Claims in defense to a disciplinary action, based on a complaint that led to the registered nurse's participation in the diversion program, that he or she was prejudiced by the length of time that passed between the alleged violation and the filing of the accusation. The waiver shall be limited to information necessary to document the length of time the registered nurse participated in the diversion program.

SEC. 21. Section 3501 of the Business and Professions Code is amended to read:

3501. As used in this chapter:

(a) “Board” means the Medical Board of California.

(b) “Approved program” means a program for the education of physician assistants that has been formally approved by the committee.

(c) “Trainee” means a person who is currently enrolled in an approved program.

(d) “Physician assistant” means a person who meets the requirements of this chapter and is licensed by the committee.

(e) “Supervising physician” means a physician and surgeon licensed by the board or by the Osteopathic Medical Board of California who supervises one or more physician assistants, who possesses a current valid license to practice medicine, and who is not currently on disciplinary probation for improper use of a physician assistant.

(f) “Supervision” means that a licensed physician and surgeon oversees the activities of, and accepts responsibility for, the medical services rendered by a physician assistant.

(g) “Committee” or “examining committee” means the Physician Assistant Committee.

(h) “Regulations” means the rules and regulations as contained in Chapter 13.8 (commencing with Section 1399.500) of Title 16 of the California Code of Regulations.

(i) “Routine visual screening” means uninvasive nonpharmacological simple testing for visual acuity, visual field defects, color blindness, and depth perception.

(j) “Program manager” means the staff manager of the diversion program, as designated by the executive officer of the board. The program manager shall have background experience in dealing with substance abuse issues.

SEC. 22. Section 3534.1 of the Business and Professions Code is amended to read:

3534.1. The examining committee shall establish and administer a diversion program for the rehabilitation of physician assistants whose competency is impaired due to the abuse of drugs or alcohol. The examining committee may contract with any other state agency or a private organization to perform its duties under this article. The examining committee may establish one or more diversion evaluation committees to assist it in carrying out its duties under this article. As used in this article, “committee” means

1 a diversion evaluation committee. A committee created under this
2 article operates in an advisory role to the diversion program
3 manager, as designated by the executive officer of the examining
4 committee.

5 SEC. 23. Section 3534.3 of the Business and Professions Code
6 is amended to read:

7 3534.3. Each committee has the following duties and
8 responsibilities:

9 (a) To evaluate physician assistants who request participation
10 in the program and to make recommendations to the program
11 manager. In making recommendations, a committee shall consider
12 any recommendations from professional consultants on the
13 admission of applicants to the diversion program.

14 (b) To review and designate treatment facilities to which
15 physician assistants in the diversion program may be referred, and
16 to make recommendations to the program manager.

17 (c) The receipt and review of information concerning physician
18 assistants participating in the program.

19 (d) To call meetings as necessary to consider the requests of
20 physician assistants to participate in the diversion program, to
21 consider reports regarding participants in the program, and to
22 consider any other matters referred to it by the examining
23 committee.

24 (e) To consider whether each participant in the diversion
25 program may with safety continue or resume the practice of
26 medicine, and to make recommendations to the program manager.

27 (f) To make recommendations to the program manager regarding
28 the terms and conditions of the diversion agreement for each
29 physician assistant participating in the program, including
30 treatment, supervision, and monitoring requirements.

31 (g) To hold a general meeting at least twice a year, which shall
32 be open and public, to evaluate the diversion program's progress,
33 to prepare reports to be submitted to the examining committee,
34 and to suggest proposals for changes in the diversion program.

35 (h) For the purposes of Division 3.6 (commencing with Section
36 810) of Title 1 of the Government Code, any member of a
37 committee shall be considered a public employee. No examining
38 committee or committee member, contractor, or agent thereof,
39 shall be liable for any civil damage because of acts or omissions

1 which may occur while acting in good faith in a program
2 established pursuant to this article.

3 SEC. 24. Section 3534.4 of the Business and Professions Code
4 is amended to read:

5 3534.4. Criteria for acceptance into the diversion program shall
6 include all of the following: (a) the applicant shall be licensed as
7 a physician assistant by the examining committee and shall be a
8 resident of California; (b) the applicant shall be found to abuse
9 dangerous drugs or alcoholic beverages in a manner which may
10 affect his or her ability to practice medicine safely or competently;
11 (c) the applicant shall have voluntarily requested admission to the
12 program or shall be accepted into the program in accordance with
13 terms and conditions resulting from a disciplinary action; (d) the
14 applicant shall agree to undertake any medical or psychiatric
15 examination ordered to evaluate the applicant for participation in
16 the program; (e) the applicant shall cooperate with the program
17 by providing medical information, disclosure authorizations, and
18 releases of liability as may be necessary for participation in the
19 program; and (f) the applicant shall agree in writing to cooperate
20 with all elements of the treatment program designed for him or
21 her.

22 An applicant may be denied participation in the program if the
23 examining committee or the program manager determines that the
24 applicant will not substantially benefit from participation in the
25 program or that the applicant's participation in the program creates
26 too great a risk to the public health, safety, or welfare.

27 SEC. 25. Section 3534.9 of the Business and Professions Code
28 is amended to read:

29 3534.9. If the examining committee contracts with any other
30 entity to carry out this section, the executive officer of the
31 examining committee or the program manager shall review the
32 activities and performance of the contractor on a biennial basis.
33 As part of this review, the examining committee shall review files
34 of participants in the program. However, the names of participants
35 who entered the program voluntarily shall remain confidential,
36 except when the review reveals misdiagnosis, case
37 mismanagement, or noncompliance by the participant.

38 SEC. 26. Section 4371 of the Business and Professions Code
39 is amended to read:

1 4371. (a) *The executive officer of the board shall designate a*
2 *program manager of the pharmacists recovery program. The*
3 *program manager shall have background experience in dealing*
4 *with substance abuse issues.*

5 ~~The board~~

6 (b) *The program manager shall review the pharmacists recovery*
7 *program on a quarterly basis. As part of this evaluation, the*~~board~~
8 *program manager shall review files of all participants in the*
9 *pharmacists recovery program.*

10 (c) *The program manager shall work with the contractor*
11 *administering the pharmacists recovery program to evaluate*
12 *participants in the program according to established guidelines*
13 *and to develop treatment contracts and evaluate participant*
14 *progress in the program.*

15 SEC. 27. *The responsibilities imposed on a licensing board by*
16 *this act shall be considered a current operating expense of that*
17 *board, and shall be paid from the fund generally designated to*
18 *provide operating expenses for that board, subject to the*
19 *appropriation provisions applicable to that fund.*